

Message Text

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FM AMEMBASSY PARIS
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USOECD

PASS: TREASURY AND COMMERCE; GENEVA FOR MEISSNER

E.O. LL652: N/A
TAGS: EINV, OECD
SUBJECT: OECD COMMITTEE ON INTERNATIONAL INVESTMENT
AND MULTINATIONAL ENTERPRISES (CIME); MEETING OF AD HOC
WORKING GROUP, JANUARY 18, 1978

REF: (A) DAF/IME/78.2; (B) PARIS 30712

1. SUMMARY: ONE-DAY MEETING OF CIME AD HOC WORKING
GROUP FINISHED DISCUSSION OF ISSUES IN OECD GUIDELINES
FOR MULTINATIONAL ENTERPRISES RAISED BY EARLIER SUB-
MISSION OF SPECIFIC CASES BY OECD'S TRADE UNION ADVISORY
COMMITTEE (TUAC). RESULT OF GROUP'S DELIBERATIONS WAS
INCONCLUSIVE AND ITS REPORT WILL NOT HAVE ANY SIGNIFI-
CANT AGREED CONCLUSIONS. REPORT TO FULL CIME AT ITS
APRIL MEETING WILL BE BASED ON REVISED SECRETARIAT PAPER
(REF A) AND WILL REFLECT WIDE DIVERGENCE OF VIEWS
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EXPRESSED IN WORKING GROUP. GROUP AGREED ON DESIRABILITY
OF PRESS RELEASE, ALTHOUGH THERE WAS DIFFERENCE OF VIEWS
ON ITS TIMING AND CONTENT, WITH U.S. STRESSING THAT ANY
PRESS STATEMENT SHOULD COVER ENTIRE OECD PACKAGE AND NOT
JUST TUAC CASES. APRIL CIME MEETING WILL ALSO HAVE
BEFORE IT DUTCH DRAFT PROPOSAL ON ESTABLISHING MACHINERY
TO DETERMINE ACCURACY OF FACTS ON CASES PRESENTED TO

CIME, ALTHOUGH U.S. AND SEVERAL OTHER DELS OPPOSED IDEA IN PRINCIPLE. FINALLY, GROUP AGREED PRESENT PHASE OF WORK ON TUAC CASES HAD BEEN COMPLETED AND THAT FURTHER ACTIVITY WOULD DEPEND ON RESULTS OF APRIL MEETING OF FULL CIME AND LATTER'S CONSULTATIONS AT THAT TIME WITH BIAC AND TUAC. END SUMMARY

A. CLASSIFICATION OF REMAINING TUAC CASES

2. GROUP (UNDER CHAIRMANSHIP OF LEVY, SWITZERLAND) BEGAN BY REVIEWING THOSE CASES PRESENTED BY TUAC WHICH HAD NOT BEEN DISCUSSED AT PREVIOUS AD HOC GROUP MEETING (REF B), AND GENERALLY AGREED WITH SECRETARIAT SUGGESTIONS ABOUT THEM (SECTION 2, REF A). IT WAS AGREED TO DISREGARD SECRETARIAT NOTE IN ANNEX TO PAPER, WHICH CLASSIFIED AND DISCUSSED PARTICULAR CASES, SINCE PURPOSE OF SUB-GROUP WAS TO EXAMINE PRINCIPLES AND NOT DISCUSS MERITS OF INDIVIDUAL CASES.

B. EXAMINATION OF ISSUES

3. BULK OF MEETING TIME DEVOTED TO DISCUSSION OF GENERAL ISSUES RAISED BY TUAC CASES AS PRESENTED IN SECRETARIAT PAPER (REF A). GROUP ACCEPTED CHAIRMAN'S PROPOSAL TO USE PARAGRAPHS 3-27 OF THIS PAPER AS BASIS FOR EVENTUAL REPORT TO CIME, AFTER REVISION BASED ON GROUP'S DISCUSSION.

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SION. U.S. DEL (BOERNER) INDICATED THIS PROCEDURE ACCEPTABLE AS LONG AS (1) NO CONCLUSIONS WERE DRAWN IN PAPER; (2) MENTION OF SPECIFIC CASES WAS AVOIDED; AND (3) THERE WAS CLEAR STATEMENT MADE ON PRINCIPLE OF NON-DISCRIMINATION BETWEEN NATIONAL AND MULTINATIONAL FIRMS, EITHER IN INTRODUCTION OR APPROPRIATE PLACE IN TEXT. U.S. DEL AT OUTSET ALSO EXPRESSED CONCERN OVER PRESENT "QUESTION AND ANSWER" FORMAT OF PAPER WHICH MIGHT GIVE APPEARANCE OF CONCLUSIONS. HOWEVER, THIS DANGER MINIMIZED BY CHAIRMAN'S FORMULATION THAT ANSWER WILL CONTAIN ONLY POSSIBLE "ELEMENTS" OF REPLIES TO QUESTIONS AS WELL AS BY CONSIDERABLE DIVERGENCE OF VIEWS AMONG DELEGATIONS THAT EMERGED DURING DISCUSSION AND WILL BE REFLECTED IN REVISED SECRETARIAT PAPER. DRAFT OF REVISION WILL BE CIRCULATED TO DELEGATES FOR COMMENT BEFORE PAPER FINALIZED.

4. MOST SIGNIFICANT POINTS OF DISCUSSION ON ISSUES INCLUDE FOLLOWING:

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-- RESPONSIBILITY OF PARENT COMPANY FOR ITS SUBSIDIARIES: THIS ISSUE, BASED ON BADGER CASE, DID NOT ELICIT MUCH DISCUSSION, EXCEPT THAT GROUP AGREED TO U.S. DEL REQUEST THAT STATEMENT ON NON-DISCRIMINATION BETWEEN NATIONAL AND MULTINATIONAL FIRMS BE INCLUDED IN DISCUSSION OF ISSUE. SECRETARIAT NOTIFIED DELEGATES THAT IT PLANNED TO CIRCULATE, IN NEAR FUTURE, QUESTIONNAIRE TO MEMBER COUNTRIES REQUESTING INFORMATION ON THEIR LEGAL SITUATION ON RESPONSIBILITY OF PARENT COMPANY FOR OBLIGATIONS OF ITS SUBSIDIARIES.

-- DECISION TO DROP PARAGRAPH 16 OF REF A ON WHETHER "ADVERSE EFFECTS" MENTIONED IN EMPLOYMENT AND INDUSTRIAL RELATIONS SECTION OF MNE GUIDELINES INCLUDE INTERESTS OF HOST COUNTRY, SINCE THERE WAS GENERAL AGREEMENT THEY DO NOT.

-- DIFFERENCE OF OPINION REPRESENTED BY SWEDISH AND U.S.

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POINTS OF VIEW ON WHETHER MNE GUIDELINES COVER THREATS OF WITHHOLDING FUTURE INVESTMENTS (AS OPPOSED TO TRANSFERRING OPERATIONS ALREADY IN PLACE) -- U.S. VIEW, GENERALLY SUPPORTED, WAS THAT THEY DO NOT.

-- DUTCH VIEW, SUPPORTED ONLY BY DANES AND SWEDES, THAT APPLICATION BY MNE'S OF COMPARABLE WAGE STANDARDS (II, REF DOC A) SHOULD BE BASED ON SPECIFIC STANDARD IN HOST COUNTRY WHICH WOULD BE "NOT LESS THAN AVERAGE" COMPANY.

5. REPORT TO CIME: TWO REPORTS ON WORK OF AD HOC GROUP WILL BE MADE TO CIME. WRITTEN REPORT WILL CONSIST OF REVISED SECRETARIAT PAPER (PARAGRAPH 3 ABOVE), WHICH DELS WILL HAVE FURTHER OPPORTUNITY TO REVIEW. IN ADDITION, CHAIRMAN WILL MAKE ORAL REPORT TO INFORM CIME OF DISCUSSION ON SPECIFIC TUAC CASES. IN COVERING NOTE, WRITTEN REPORT WILL REFER TO GROUP'S OBJECTIVES /DRAWN FROM PARAGRAPH TWO OF CHAIRMAN'S REPORT TO DECEMBER CIME (IME(77)20)/ AND RECALL CERTAIN FUNDAMENTAL POINTS IN GENERAL TERMS, BASED ON INTRODUCTION SECTION OF MNE GUIDELINES. CONSENSUS OF GROUP WAS THAT REPORT SHOULD LEAVE DECISION TO CIME ON HOW REPORT AND ISSUES IT RAISES SHOULD BE USED, IN PARTICULAR ON POSSIBLE FUTURE WORK OF AD HOC GROUP AND ITS POSSIBLE ROLE IN DEVELOPMENTS LEADING UP TO 1979 REVIEW OF OECD INVESTMENT PACKAGE.

C. PROCEDURES

6. GROUP ALSO DISCUSSED TWO PROCEDURAL ISSUES MENTIONED AT END OF SECRETARIAT PAPER -- I.E., PROBLEMS RELATED TO THE ACCURACY OF FACTS OF CASES PRESENTED AND INFORMING THE PUBLIC ABOUT COMMITTEE'S CONCLUSIONS LIMITED OFFICIAL USE

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REGARDING APPLICATION OF THE GUIDELINES.

7. ACCURACY OF FACTS: U.S. DEL NOTED THAT DETERMINATION OF ACCURACY OF FACTS NOT ESSENTIAL FOR CIME DELIBERATIONS, SINCE PURPOSE WAS TO IDENTIFY GENERAL ISSUES IN GUIDELINES AND NOT HAVE CIME ACT AS TRIBUNAL ON SPECIFIC CASES. OTHERS AGREED THAT CIME HAD NO JUDICIAL FUNCTIONS, BUT NUMBER OF DELS, INCLUDING DUTCH,

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SWEDISH AND, TO LESSER EXTENT, UK, ARGUED BETTER KNOWL-
EDGE OF ACTUAL SITUATIONS WOULD AID COMMITTEE IN ITS WORK.
SPECIFIC DUTCH PROPOSAL FOR FORMAL FACT-FINDING BODY,
HOWEVER, RECEIVED COOL RESPONSE. DUTCH INTEND TO PRESS
ISSUE AND WILL PREPARE PAPER FOR AGENDA ITEM ON THIS
ISSUE FOR APRIL CIME MEETING.

8. INFORMATION TO PUBLIC: THERE WAS GENERAL AGREEMENT
THAT PUBLIC STATEMENT ON CIME'S ACTIVITIES WOULD BE
DESIRABLE IN ORDER TO CONTRADICT FALSE INFORMATION
APPEARING IN PRESS AND SHOW COMMITTEE HAS BEEN SERIOUSLY
ADDRESSING ISSUES. DELEGATES SUGGESTED AS POSSIBLE
VEHICLES FOR INFORMING PUBLIC (1) REQUIREMENT IN CIME
MANDATE FOR PERIODIC REPORTS ON ITS ACTIVITIES TO OECD
COUNCIL; (2) REPORT TO OECD COUNCIL ON 1979 REVIEW;
AND/OR (3) PERIODIC CONSULTATIONS WITH TUAC AND BIAC.
GROUP AGREED TO SEPARATE ISSUES (A) OF HOW BEST TO
INFORM OECD COUNCIL ABOUT CIME ACTIVITIES AND (B) NEED
FOR PUBLIC STATEMENT IN NEAR FUTURE. FORMER ISSUE WILL
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BE SUBJECT OF "REFLECTION" PAPER BY SECRETARIAT WHICH
WILL BE CONSIDERED AT JULY CIME MEETING. WITH REGARD
TO LATTER, SECRETARIAT WILL DRAFT PRESS RELEASE TO BE
CIRCULATED FOR COMMENTS BEFORE APRIL CIME MEETING.

U.S. DEL EXPRESSED VIEW THAT PRESS STATEMENT SHOULD BE BALANCED AND NOT BE LIMITED ONLY TO TUAC CASES OR GUIDELINES, BUT INCLUDE MENTION OF OTHER OECD WORK ON INVESTMENT REGARDING NATIONAL TREATMENT AND INCENTIVES/DISINCENTIVES. FOR THIS REASON, U.S. DEL SAID IT WAS PROBABLY BETTER TO MAKE RELEASE AFTER APRIL CIME MEETING, SO IT COULD INCLUDE DECISIONS MADE THERE AND WHICH WE HOPE WOULD RESULT IN PRESENTING MORE BALANCED PICTURE OF CIME ACTIVITIES. OTHERS THOUGHT THAT PRESS STATEMENT BEFORE CIME MEETING AND CONSULTATIONS WITH BIAC AND TUAC WOULD AVOID IMPRESSION THAT CIME REACTING TO PRESSURE BY ISSUING STATEMENT. DURING DISCUSSION OF INFORMING PUBLIC, SWISS DEL MADE SUGGESTION, SUPPORTED BY OTHERS, OF ASKING BIAC AND TUAC TO COMMENT ON HOW MNE GUIDELINES WORKING AND ALSO OF REQUESTING COUNTRIES FOR STATEMENTS ON WHETHER THE MNE'S IN THEIR COUNTRIES ARE FOLLOWING THE OECD GUIDELINES.

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